

WORKERS' COMPENSATION ADVISORY COUNCIL

**MINUTES ~ ~DECEMBER 14, 2000 MEETING [1:00 P.M.]
500 JAMES ROBERTSON PARKWAY
HEARING ROOM 160, FIRST FLOOR
DAVY CROCKETT TOWER
NASHVILLE, TENNESSEE**

The meeting was called to order by Mr. Steve Adams, State Treasurer.

Voting members in attendance:

Mr. Jack Gatlin
Mr. Dave Goetz
Mr. James G. Neeley
Mr. Bob Pitts
Mr. Othal Smith, Jr. [by proxy to Mr. Neeley]

Nonvoting members in attendance:

Ms. Jacqueline Dixon
Ms. Abbie Hudgens
Mr. Jerry Mayo

Ex officio members in attendance:

Ms. Sue Ann Head, Administrator-Division of Workers' Compensation
Department of Labor and Workforce Development
[designee for Commissioner Michael E. Magill]
Mr. Neil Nevins, Assistant Commissioner, Department of Commerce & Insurance
[designee for Commissioner Anne Pope]

Also present:

M. Linda Hughes, Executive Director
Mr. Dale Sims
Mr. Dave Wilstermann, Research Analyst

The minutes of the Advisory Council meetings of September 28, 2000 and October 12, 2000 were unanimously approved.

NEW BUSINESS

1. Chiropractor Study - Discussion of Options for Study Methodology

Linda Hughes, Executive Director, explained the Advisory Council is required to file a report, no later than September 1, 2002, with the Senate Commerce, Labor and Agriculture Committee and the House Consumer and Employee Affairs Committee on the effect of the implementation of Public Chapter 990, enacted by the 2000 General Assembly, on the workers' compensation pool. Public Chapter 990, which became effective July 1, 2001 and sunsets on December 31, 2000, requires employers to provide a panel choice of four medical providers, one of whom must be a chiropractor, to an employee who sustains a back injury. Ms. Hughes noted the bill's sunset date is nine months prior to the date by which the Advisory Council's report is due.

Ms. Hughes discussed possible methods by which the Advisory Council could develop the information necessary to prepare the report:

1. Closed Claims Study Utilizing SD-1 Data

Advisory Council staff could use the SD-1 forms to conduct a study of back injury employees who received treatment from a chiropractor with similar employees who received treatment from medical doctors. The study would have to be limited to back injuries which did not require surgery in order to compare similar cases. Ms. Hughes pointed out this method does have limitations as the SD-1 form does not separate total medical costs into the component parts and the form does not have an item to distinguish the specialty of the medical care provider rendering it difficult to query the computer system to separate chiropractors from medical doctors.

2. State Employee Study

Ms. Hughes also discussed conducting a study involving a large employer which has access and control of its own data. While the State of Tennessee is such an employer which does allow chiropractic treatment (as a subsequent choice, not as a first choice), Public Chapter 990 does not apply to the State. Therefore, it would not be easy to design a study utilizing State data.

3. Contracted Study

The Executive Director suggested the Workers' Compensation Research Institute (WCRI) could be retained to conduct a closed claims study to compare the costs and outcomes in back injury cases in which the employees received chiropractic treatment with those who received treatment from a medical doctor. It may be possible for WCRI to obtain data directly from the insurance carriers/self-insured employers which are not available from the SD-1 forms. Such a study would incur a cost. Ms. Hughes also reported the NCCI indicated several states have recently enacted legislation similar to Public Chapter 990 and the NCCI has agreed to check to see if it would be possible for the NCCI to provide assistance to the Advisory Council in this study.

After discussion, the following persons were appointed to a subcommittee to explore study options and to make a final recommendation to the Advisory Council: Jim Neeley, Dave Goetz, Jerry Mayo, Abbie Hudgens, Jackie Dixon, Sue Ann Head and Dale Sims. Ms. Hughes will coordinate scheduling of the meeting of the subcommittee.

2. Amended Uniform Commercial Code [Article 9] - Application to Workers' Compensation

Mr. Gif Thornton, representing the Alliance of American Insurers, was recognized to discuss the effect of recent UCC legislation on workers' compensation. Mr. Thornton reminded Advisory Council members that by statute workers' compensation benefits are not assignable and this is similar to laws in all the other states. He explained the 2000 General Assembly enacted a comprehensive rewrite of Article 9 of the Uniform Commercial Code (Secured Transactions) which does not become effective until July 1, 2001. He stated the language of the 2000 bill is broad in scope and could be read to "trump" the existing non-assignability of workers' compensation benefits. He indicated he had spoken with the bill sponsors and interest groups supporting the legislation during the 2000 session and it was not the intentions of the sponsors or supporters of the bill to disrupt the state of the workers' compensation law's protection of benefits.

Mr. Thornton stated the Alliance had prepared general amendatory language to assure the continued protection of workers' compensation benefits. On behalf of the Alliance, Mr. Thornton requested that the Advisory Council include the amendment in any "housekeeping or omnibus" bill which might be proposed by the Advisory Council. It was pointed out the proposed language excluded other benefits in addition to workers' compensation. After discussion, it was the consensus of the members that the Advisory Council should not propose amendments which were broader than workers' compensation issues. Mr. Pitts made a motion that the Alliance file its proposed amendatory language and the Advisory Council would endorse and comment favorably on any portion of a proposed bill which relates to the workers' compensation system. Mr. Neeley seconded the motion, which was unanimously adopted by the voting members.

3. Home Health Care Statute

Ms. Hughes initiated the discussion of a Tennessee law which requires all home-delivered physical therapy, occupational services and nursing services to be provided by a licensed home health care agency and how the law impacts the workers' compensation system and mandated case management. Mr. Goetz explained the issue was raised at the end of the 2000 legislative session and it was determined the issue should be given additional study. Mr. Goetz reported subsequent discussions of the issue made it clear to him, while the home health statute was passed for the protection of the public, an injured employee who receives care in the home is already protected by the workers' compensation law since the employer is strictly liable for any adverse consequences of medical care provided to the injured worker. Mr. Goetz also stated the employer is mandated to provide case management in specified cases and the case manager and/or the claims adjuster are already providing most, if not all, the services which are provided by the licensed home health

agency. He also pointed out while many employers and insurers choose to utilize licensed home health agencies because of potential advantages there are instances in which an employer contracts directly with a licensed nurse to provide home care. He stated after study of the issue he sees no need for an additional administrative cost to be imposed on the workers' compensation system.

Mr. Neeley stated if the service is needed it should be part of the doctor's recommendation and he was unaware of any circumstance in which an employee did not receive home care when it had been ordered by the attending physician. He indicated a desire that another unnecessary program not be required in the workers' compensation system. He also reported there are some employers which have nurses in their plants who provide these services and expressed his concern regarding the impact of this statute on those situations.

On behalf of the insurance industry, Mr. Mayo echoed the comments of Mr. Goetz and Mr. Neeley and pointed out if the injured worker needs a home health agency in order to get the employee back to work as quickly as possible, it will be provided. He expressed concern over an additional mandated layer of care when the case manager and physician do not recommend a home care agency and the care could be provided by a physical therapist, for example, without affiliation with a home care agency. He stated he had used home care agencies in the past when appropriate and will continue to do so, but was of the opinion this mandate will add fairly significant costs to the system.

The Chair recognized Mr. Dan Elrod, representing the Tennessee Association of Home Care, a trade organization comprised of most of the home health agencies in the state. Mr. Elrod explained home health agencies are not seeking to mandate additional services. He pointed out it has been the public policy of the State of Tennessee for 25 years that if a person provides physical therapy, occupational therapy, skilled nursing care, etc. in the home, that individual must be part of a licensed home health agency. He stated he understood the goal of keeping health costs down, consistent with appropriate medical care and returning the employee to work in a workers' compensation case. Mr. Elrod suggested, however, there had been no demonstration that provision of care through a home care agency is more expensive than care provided by an individual. He indicated if a case manager contracts for an individual, it will have to be through a staffing company which will also expect to make a profit and nobody knows if this will be more or less expensive than a home health agency. He stated the home health care industry is very competitive and anyone who wants to negotiate low costs can do so.

Mr. Elrod said there are unique aspects about the regulation of home health which provide "value-added" to the injured employee. He listed the following benefits which are provided by a licensed home health agency:

- *an assessment of the environment of the home plan to assure health care can be delivered safely and that the home has the necessary electrical and other facilities
- *training of the care giver and on-going supervision
- *safeguards to maintain confidentiality of a patient's medical records, as required by state law

- *background checks on the care givers
- *24 hour coverage for emergencies or absence of the assigned care giver
- *provision of complete coordination of care in the home, including lab tests and communication with the physician

Mr. Elrod suggested case managers and health care agencies confer to determine whether the two groups provide duplicate services and whether home health care is more expensive. Mr. Neeley commented although he had been involved in the workers' compensation system for 25 years and through several reforms this was the first he had heard of the requirement concerning home care. Mr. Neeley inquired whether an employer who uses its plant nurse to provide home care to employees would be required to comply with the home health agency statute. Mr. Elrod responded the employer would have to comply with the law.

Mr. Elrod indicated he had checked with a large insurer which stated it provided home health care by use of a home health agency. He also stated as of the end of July, only 1% of the home health agency business involved workers' compensation cases.

Mr. Mayo pointed out his objection is to the mandated, as opposed to permissive, utilization of home health agencies. Mr. Mayo and Mr. Goetz stressed the core of the problem lies in the extent to which the mandatory nature of case management will duplicate services of the home health agency as this would definitely add to the cost of the system. Ms. Hudgens expressed concern the requirement of licensed delivery of home health care will disrupt programs established by some employers to provide specialized therapy designed for a particular employer, such as work hardening and therapies designed to assist employees with shoulder or back injuries with their efforts to return to work.

Mr. Adams suggested the Advisory Council defer making any recommendations until a bill addressing the issue is referred to the Advisory Council for comment during the next legislative session as this will allow further thought and study of the issue.

4. Report to General Assembly re: Assigned Risk Plan and Loss Costs System

a.) Department of Commerce & Insurance Presentation re: Tennessee Market

Mr. Benn Daley, Actuary, presented both a written and oral report concerning the Tennessee workers' compensation market. The information presented included:

- * Tennessee workers' compensation premium "written" by coverage type for 1990-1999:
 - Self-insured Employers [simulated premium];
 - Self-insured Groups
 - Large Deductible Policies [premiums avoided/discount]
 - Assigned Risk
 - Voluntary Market
- * Number of insurer groups writing "top" 75% of coverage for 1995-1999.

- * Tennessee workers' compensation premium written by loss costs multiplier for 1997-1999.
- * Comparison of numbers of assigned risk policies and estimated annual premium comparisons for 1999 and 2000.
- * Number of individual self-insured employers and self-insured "simulated" premiums for 1990-1999.
- * Number of self-insured groups and self-insured group total premiums for 1990-1999.

Mr. Daley also reported the following information concerning several insurance companies which have had financial problems:

1. Reliance Insurance Company is not insolvent and the Pennsylvania Department of Insurance has been in daily negotiations concerning debt restructuring.
2. Superior National (Commercial Compensation) was declared insolvent as of September 26, 2000 and the Tennessee Guaranty Fund is paying claims. The following companies are not covered by the Guaranty Fund: Underwriters Ins., BICO/Centre, Zurich, Cal.Comp.
3. Lumber Mutual Insurance Companies were placed into rehabilitation with the Massachusetts Department of Insurance as of November 1, 2000. Claims, unearned premium, etc. will be handled by Lumber.
4. Credit General was placed into rehabilitation with the Ohio Department of Insurance on November 6, 2000 and the Tennessee Department of Commerce and Insurance has been advised workers' compensation indemnity claims will be paid.

b.) Update re: Loss Costs Study and Consideration of Draft "Interim Report"

Ms. Hughes reported Tillinghast-Towers Perrin was awarded the contract to perform the loss costs study. The members were provided a copy of a summary of the services to be provided by Tillinghast and information concerning the firm. Pursuant to the contract, Tillinghast is required to deliver its finished product no later than February 1, 2001. She informed the members a meeting would be held in February to receive an oral report of the study results from Tillinghast.

The Executive Director requested approval for an "Interim Report" on loss costs, the Tennessee workers' compensation insurance market and the assigned risk plan be provided to the General Assembly to comply with the mandated report which is due January 1, 2001. Mr. Neeley made a motion that Ms. Hughes work in conjunction with the Chair to prepare the "Interim Report" for the Legislature. The motion was properly seconded and unanimously approved.

c.) Other Business

Ms. Hughes distributed a list of "reserved/tentative" dates for the Advisory Council to meet in 2001 to assure sufficient dates to accomplish all business to come before the Advisory Council, including the Tillinghast study, review of proposed legislation and consideration of any loss costs filing.

The meeting was adjourned at 2:45 p.m.